

## Message Text

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21

ORIGIN OPIC-06

INFO OCT-01 NEA-09 ISO-00 EB-07 L-02 IGA-01 AID-05 /031 R

66613

DRAFTED BY: OPIC/GC:SFRANKLIN

APPROVED BY: EB/IFD:RSMITH

OPIC/T:LEO NIELSON

EB/IFD/OIA:DHSTEBBING

NEA/INS:RBMORLEY (INFO)

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R 182241Z FEB 75

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

UNCLAS STATE 036485

E.O. 11652: N/A

TAGS: EFIN ID

SUBJ: PIBCO COOLEY LOAN

REF: A) NEW DELHI 1846

B) NEW DELHI 0029

1. OPIC CONCURS WITH RECOMMENDATION STATED REF B THAT ACCELERATION OF PIBCO COOLEY LOAN BE DELAYED PENDING CONSIDERATION OF ACTION ON THE OVERRUN AGREEMENT AGAINST THE PUNJ FAMILY, JOHNS-MANVILLE (JM) OR BOTH. ACCORDINGLY, SUCH ACTION SHOULD NOT BE TAKEN UNTIL RECONSIDERED BY THE MISSION AND OPIC AND SUBSEQUENTLY AUTHORIZED BY OPIC.

2. BASED ON THE LOAN DOCUMENTS AND PRELIMINARY REVIEW OF INDIAN LAW, OPIC/GC FORSEES SOME PROBLEMS IN USING THE OVERRUN AGREEMENT AS LEVERAGE ON PIBCO, J.M. OR THE PUNJ FAMILY. FIRST, THE MOST APPROPRIATE APPROACH TO TAKE WITH RESPECT TO ANY POSSIBLE OVERRUN COSTS ON THE PROJECT IS NOT CLEAR BECAUSE PROJECT NEVER WAS COMPLETED

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INDEED, WHAT CONSTITUTES PROJECT COMPLETION IS NOT DEFINED CLEARLY IN THE OVERRUN AGREEMENT AND SUBSTANTIAL INTERPOLATION TO THE LOAN APPLICATION DOCUMENTS WILL BE NECESSARY TO ESTABLISH THIS POINT. IT FURTHER APPEARS THAT THE COST OF COMPLETING THE PROJECT HAS NOT  
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BEEN ASCERTAINED. IF IT HAS, PLEASE

ADVISE.

3. ASSUMING LEGAL PROCEEDINGS WERE INITIATED ON THE OVERRUN AGREEMENT, OPIC/GC IS UNABLE TO DETERMINE THE PROPER REMEDY AVAILABLE. SPECIFIC PERFORMANCE APPEARS TO BE THE ACTION THAT NORMALLY WOULD BE BROUGHT, I.E. AN ACTION TO FORCE PIBCO TO FINISH THE PROJECT AND THE PUNJ FAMILY AND JM TO PUT UP THE FUNDS, BUT RESEARCH SOURCES AVAILABLE SUGGEST AN INDIAN COURT WOULD NOT GRANT SPECIFIC PERFORMANCE UNDER THESE CIRCUMSTANCES BECAUSE SUCH AN ORDER WOULD BE CONSIDERED TO REQUIRE CONTINUOUS SUPERVISION BY THE COURT. AN ALTERNATIVE MIGHT BE TO ASCERTAIN THE AMOUNT NEEDED TO FURNISH THE PROJECT AND THEN REQUIRE THE PUNJ FAMILY AND JM TO PUT UP THE CASH WHETHER IT WAS USED FOR THAT PURPOSE OR NOT. IT MIGHT ALSO BE POSSIBLE TO RECOVER FROM THE PUNJ FAMILY OR JM UNDER THE OVERRUN AGREEMENT AND POSSIBLY THE MANAGEMENT AGREEMENT FOR DAMAGES RESULTING FROM THEIR FAILURE TO FINISH THE PROJECT AS REPRESENTED IN THE LOAN APPLICATION. ALL THESE QUESTIONS SHOULD BE RESEARCHED BY INDIAN COUNSEL.

4. CONSISTENT WITH THE FOREGOING, OPIC RECOMMENDS THE FOLLOWING PROCEDURE: (A) THE MISSION SHOULD ASCERTAIN COSTS OF COMPLETING THE PROJECT AS ORIGINALLY PLANNED PLUS OBTAIN A LEGAL OPINION, FROM PRIVATE INDIAN COUNSEL IF NECESSARY, REGARDING AVAILABLE REMEDIES UNDER THE OVERRUN AGREEMENT AND OTHER UNDERTAKINGS; (B) TO UNDESCORE THE SITUATION, OPIC SHOULD DIRECTLY ADVISE THE PUNJ FAMILY AND JM IT IS CONSIDERING ACTION ON THE OVERRUN AGREEMENT, CALLING THE LOAN, OR TAKING OTHER MEASURES IF THE PRESENT SITUATION IS NOT REMEDIED, AND AT THE SAME TIME AFFORD THE PUNJ FAMILY AND JM THE OPPORTUNITY TO OFFER AN ACCEPTABLE ALTERNATIVE SOLUTION; AND (C) FAILING RECEIPT OF AN ACCEPTABLE RESPONSE WITHIN A REASONABLE PERIOD OF TIME (PERHAPS 30 DAYS), THE USG SHOULD BE PREPARED TO INITIATE ACTION DEEMED APPROPRIATE AT THAT TIME.

5. IF MISSION ANTICIPATED A DIFFERENT COURSE OF ACTION, PLEASE ADVISE. MAW

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** POLICIES, LOANS, PIBCO COOLEY  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 18 FEB 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
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**Disposition Reason:**  
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**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** PIBCO COOLEY LOAN  
**TAGS:** EFIN, IN, US, OPIC  
**To:** NEW DELHI  
**Type:** TE  
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